

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

James W. Herne and
Michelle A. Herne,
Plaintiffs

v.

Case No. 04-cv-202-SM

Cooper Industries, Inc. and
Columbus McKinnon Corporation,
Defendants

O R D E R

On May 2, 2005, Columbus McKinnon Corporation filed a motion for summary judgment (document no. 25) as to counts VI and X of plaintiffs' third amended complaint. By order dated October 19, 2005 (document no. 32), which was sent to the parties electronically on October 20, 2005, the court denied McKinnon Corporation's summary judgment request as to count VI, but granted it judgment as a matter of law on count X.

Unbeknownst to the court, on October 12, 2005, the plaintiffs and McKinnon Corporation electronically filed a document entitled "Agreement for Entry of Judgment Pursuant to Local Rule 41.1" (document no. 30). By corrective entry on the same date, the clerk's office notified the parties that it was treating the submission as a Stipulation for Dismissal. The filing of that document prior to the issuance of a decision on

the pending motion for summary judgment rendered that motion moot. Thus, because the matter was moot, it was error to subsequently issue a ruling on the motion for summary judgment.

For the foregoing reasons, the court's order (document no. 32) on McKinnon Corporation's motion for summary judgment is vacated.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Steven J. McAuliffe", is written over a horizontal line.

Steven J. McAuliffe
Chief Judge

October 21, 2005

cc: John J. Cronin, III, Esq.
Gary M. Burt, Esq.
Marc R. Scheer, Esq.